

overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§3.71 Definitions.

As used in this subpart the following definitions shall apply:

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the government; or a government corporation.

Debt means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of government appropriations;

(iv) Using or authorizing the use of government-owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of government funds.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in section 581.105(b) through (f) of part 5 of this title.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces, but does not include a FSA county executive director or county office employee.

Hearing official means a USDA administrative law judge or some other individual not under the control of the Secretary.

Salary offset means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

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Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 3.72 Coordinating offset with another Federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) *When another agency is owed the debt.* USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) *Mandatory centralized administrative offset.* Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

§ 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until USDA is assured that the requirements have been met.

§ 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 days

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written notice. This Notice of Intent to Offset Salary will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and; and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The employee's right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;